

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

IN RE: CONFLICT OF INTEREST OF THE
OFFICE OF THE PHILADELPHIA DISTRICT
ATTORNEY,

No. 125 EM 2019

PETITION OF: MAUREEN FAULKNER,
WIDOW OF DECEASED POLICE OFFICER
DANIEL FAULKNER

ORDER

AND NOW, to wit, this __ day of April, 2020, upon consideration of Respondent’s Motion to Compel the Depositions of Petitioner’s Unnamed Witnesses, it is hereby ORDERED, ADJUDGED, and DECREED that said motion is **GRANTED**.

Petitioner is ORDERED to make any witness it intends to call at the hearing of this matter available for deposition before April 29, 2020. Petitioner may not call at the hearing any witness not made available for deposition by April 29, 2020.

BY THE COURT:

Hon. John M. Cleland

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**RESPONDENT’S MOTION TO COMPEL THE
DEPOSITIONS OF PETITIONER’S UNNAMED WITNESSES**

Respondent, the District Attorney’s Office (“DAO”), by and through its attorneys, Schnader Harrison Segal & Lewis LLP, moves to compel the depositions of Petitioner’s unnamed witnesses, and in support thereof avers as follows:

1. On Wednesday, April 8, 2020, counsel for the DAO requested by e-mail that counsel for Petitioner disclose any witnesses it intends to call at the hearing of this matter other than those identified by the DAO, and any documentary evidence he intends to introduce other than what he attached to her submissions in this matter, as follows:

George, please let me know whether you intend to present at the hearing testimony of

any witnesses other than those whose depositions you will take pursuant to Judge Cleland's Order or documentary evidence that you have not attached to your pleadings, motions and applications in this proceeding. If you do intend [to] present any such witnesses or documents, please identify them and let me know whether you will agree to depositions of the witnesses and production of the documents. Thank you.

2. By e-mail dated April 13, 2020, counsel for the DAO wrote to counsel for the Petitioner: "George, I would appreciate the courtesy of a response. Thank you."

3. Later on April 13, 2020, counsel for Petitioner responded by e-mail as follows: "[t]he minute I get your confirmation that all your witnesses who are under court order to submit to their depositions will appear on the 20th, 21st, and 22nd, and in what order, I will respond."

4. Counsel for the DAO replied the same day: "Okay. I will address your refusal with Judge Cleland. There is no legal basis for your conditioning release of the information. We both have a lot of preparation between now and the dates reserved for the hearing."

5. Counsel for Petitioner failed to disclose witnesses and documents, even after his own conditions for disclosure had been met. Accordingly, on April 14, 2020, counsel for the DAO filed a motion to compel identification of witnesses and documents.

6. On April 16, 2020, counsel for Petitioner responded to the motion to compel identification of witnesses and documents, seeking to delay disclosure until after the expiration of the period for pretrial discovery.

7. Basic due process requires that the DAO be provided with the disclosure of witnesses and documents in sufficient time to permit depositions of the witnesses and other essential preparation.

8. Pennsylvania courts do not permit “trial by ambush.” *Gregury v. Greguras*, 196 A.3d 619, 628 (Pa. Super. Ct. 2018)(“one of the primary purposes of discovery is to prevent the surprise and unfairness of a trial by ambush, in favor of a trial on the merits.”); *Clark v. Hoerner*, 525 A.2d 377, 382 (Pa. Super. Ct. 1986)(“the purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits”).

9. Accordingly, Respondent requests that the Court compel the depositions of Petitioner’s unnamed witnesses and preclude any witness that Petitioner has not made available for depositions.

WHEREFORE, Respondent respectfully requests that this Honorable Court enter an Order that Petitioner make all witnesses she intends to call at the hearing (other than those identified by the DAO on April 1, 2020 and April 10,

2020) available for depositions by April 29, 2020, and that Petitioner shall not be permitted to call at the hearing any such witness not made available.

Respectfully submitted,

/s/ David Smith

David Smith, I.D. No. 21480

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Attorneys for Respondent,

The Office of the District Attorney

Dated: April 17, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ David Smith

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Attorneys for Respondent,

The Office of the District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020, a true and correct copy of the foregoing document was filed and served via e-mail to the Special Master, with copies to all counsel:

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/s/ David Smith